

# The Solicitors' Journal

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## Current Topics.

### The Great Seal.

In view of the forthcoming visit of the LORD CHANCELLOR to Canada, the announcement at p. 644 of last week's issue that His Majesty the King has appointed Commissioners to have the care and custody of the Great Seal while LORD MAUGHAM is absent from the Kingdom, is a reminder of the fact that the Great Seal, to which an almost mystical significance attaches as the sign and symbol of the highest authority, cannot be taken outside the realm, seeing that it may at any time be required to be used. With its custody, we naturally associate the Lord Chancellor for the time being, and indeed its transfer to him invests him with the manifold powers attaching to his high office. A recent writer tells us that in early times, the Lord Chancellor was the King's Chaplain and the Keeper of his conscience, and remains the Keeper of the Great Seal. Considering its official importance, the Great Seal has always been carefully conserved, though not always in the precise fashion waggishly asserted by Dickens who made one of his characters declare that it was guarded night and day by two men in bag wigs and with drawn swords. Even all the care bestowed upon its safe custody has not, however, always conferred immunity upon it, for at least on one occasion it was stolen from the house of the Lord Chancellor. In an old report relating to the Court of Chancery occurs this curious item: "For sixteen yards of woollen cloth at 8s. a yard to use about the Great Seal at the time of sealing, for one whole year, £6 3s." When a new Great Seal is made, the old one is "damasked," that is, tapped slightly with a hammer, which is assumed to deprive it of its former virtue, and then it becomes the perquisite of the Lord Chancellor for the time being.

### Parish Constables.

THE recent decision of Cambridgeshire Quarter Sessions to abolish the office of parish constable within the county, following as it does similar resolutions in almost all the English counties, while not altogether surprising in view of the supersession of their duties by more modern

officials, is nevertheless noteworthy as making a further break with mediæval local government. Shakespearian students are familiar with the numerous passages in the plays where Dogberry and other representatives of the old constabulary enact their rôle amusingly enough and throw an interesting light on social life and customs in those days. The appointment to the office of parish constable was made by the justices who were directed annually to require from the overseers of parishes a list of those qualified to serve. Unless specially exempted every able-bodied man between twenty-five and fifty-five resident in the parish, and rated to the poor, was required to be included in the list. As may be imagined, the office was not greatly coveted, and so many claims for exemption came before the courts. In one case it was solemnly decided that a younger brother of the Corporation of the Trinity House was not exempt; so, too, a claim for exemption by a member of the Barbers' Company who was not licensed to practise as a surgeon was rejected. Not infrequently it happened that a man was qualified in two or more parishes. In such circumstances it was decided that if he were chosen in two parishes in the same year, his acceptance of the first of these excused his non-acceptance of the second.

### Solicitors' Defalcations : Indemnity Fund.

AT the Annual General Meeting of The Law Society held on 7th July a resolution was passed referring to the Council the question of the formation of a fund to be applied in making payments to persons suffering loss owing to the defalcations of solicitors with a view to the Council reporting to a General Meeting to be called for the purpose of receiving and considering the report. The members of the Society present at the Annual General Meeting were informed that the Council had appointed a Special Committee to consider again whether any, and if so what, further steps should be taken against loss occasioned by defaulting solicitors. In the current number of *The Law Society's Gazette* it is stated that that committee has now reported and that the Council has adopted in principle the views of the committee, which

favours the formation of a relief fund (as distinct from a guarantee fund) in conjunction with an examination of accounts (as distinct from a compulsory audit of accounts). With regard to the first of these proposals the Special Committee considers that it is desirable to require every practising solicitor to contribute annually to a relief fund subject to the following conditions : (1) that every practising solicitor should be required to pay such sum, not exceeding £5 per annum, as may be prescribed by the Council into the fund as a condition precedent to taking out his practising certificate, except that no contributions should be required from any solicitor in respect of the first three years in which he holds a practising certificate, and that his contribution in respect of each of the next three years should be equal to one-half of the normal contribution ; (2) that the stamp duty on practising certificates should be reduced in the case of London solicitors from £9 to £7, and in the case of country solicitors from £6 to £4 ; and (3) that payments out of the fund should be made at the discretion of the Council, subject to satisfactory safeguards.

#### **Examination of Accounts.**

WITH regard to the second proposal referred to in the preceding paragraph, the Special Committee considers that it is desirable to enlarge the powers and duties of the Council of The Law Society under the Solicitors Act, 1933, by requiring it to make rules—(1) as to the periodical examination, by a qualified accountant appointed by the solicitor, of the books and accounts of every solicitor ; and (2) as to the production to the Council of a certificate of such accountant stating whether or not he is of opinion that the solicitor has kept the books and accounts required by the Solicitors' Accounts Rules, 1935, to be kept by him and has kept a client account at a bank as required by those rules, and whether or not from his examination of the books and accounts produced to him and from the explanations given him he is of the opinion that the solicitor has complied with the Accounts Rules. It is stated that the Council, before preparing the report to be laid before a General Meeting of the Society, will be glad to consider any observations which members may desire to make, provided they reach the Council before 15th September. We desire to express our indebtedness to our contemporary for being able to bring this information to the notice of our readers.

#### **Matrimonial Causes and the Board of Control.**

THE attention of readers should be drawn to an important communication which has recently been received from the Board of Control. A circular of July, 1938, indicated that the Board was willing to furnish to *bonâ fide* applicants in connection with proceedings under s. 2 of the Matrimonial Causes Act, 1937, copies of the reception orders under which patients were detained and statutory medical reports. It is stated that it was originally intended to limit the furnishing of these documents to cases in which proceedings had been instituted under para. (d) of the section substituted for s. 176 of the Supreme Court of Judicature (Consolidation) Act, 1925, by the Matrimonial Causes Act, 1937, s. 2, or, in other words, to petitions founded on the allegations that the respondent is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition. The letter continues : " There have, however, recently been proceedings under other sub-sections of that section in which the respondent is, or has been, under care and treatment as a person of unsound mind, and the court has expressed the opinion that it was in the public interest that, in all cases under the Matrimonial Causes Act, 1937, in which the affairs of a person under disability were before the court, copies of the reception order and reports should be available for the inspection of the court or the advisers of the parties concerned. In these circumstances, the Board have decided

to supply to *bonâ fide* applicants in connection with petitions presented under any part of the section copies of reception documents and statutory reports. As heretofore, however, the Board reserve the right to refuse to disclose any document or part of a document which they may deem it in the public interest not to disclose. A charge will be made for the copies at the rate of fourpence a folio of seventy-two words, except in the case of poor person petitioners, in which cases, after consultation with H.M. Treasury, the Board are prepared to supply copies of these documents free of charge."

#### **Payment of Wages by Cheque.**

*The Times* labour correspondent recently drew attention to the objection taken by the National Union of Public Employees to the payment of workmen's wages by cheque. It is urged by the union that this practice causes acute hardship to the men concerned and their families, and the county councils which now pay by cheque are being asked to pay in future by cash. It appears that one of the complaints of the union is that the councils which pay by cheque pay fortnightly, and that fortnightly payments for men with small incomes are a hardship. A second complaint is that a workman earning weekly sums of the amounts concerned cannot have a banking account, and must therefore resort to a tradesman or a publican to cash the cheque for him. In any case, it is urged, the workman leaves before the banks open and returns after they are shut. Various examples of hardship are given, and it is stated that a legal opinion obtained by the union supports its contention that employers are under an obligation to pay wages in coin of the realm, and that a banker's cheque does not fulfil this requirement. The union has intimated to the county councils concerned that in view of this advice it will be compelled to take legal action unless the practice is brought to an end voluntarily.

#### **Rules and Orders : Non-Contentious Probate (Draft).**

THE attention of readers is drawn to the Draft Non-Contentious Probate Rules, 1939, which have been made by the President of the Probate, Divorce and Admiralty Division of the High Court, with the concurrence of the Lord Chancellor and the Lord Chief Justice, under powers conferred by s. 100 of the Supreme Court of Judicature Act, 1925. The rules relate to administration bonds and are to effect certain amendments to the Rules and Orders and Instructions for the Registrars of the Principal Registry of the Court of Probate in respect of Non-Contentious business, dated the 30th July, 1862, as amended by any subsequent rules ("The Principal Registry Rules"), and the Rules and Orders and Instructions for the Registrars of the District Registries of the Court of Probate, dated the 27th January, 1863, as amended by any subsequent rules ("The District Registry Rules"). The proposed order will provide new rules as to the form of administration bonds, in substitution of r. 38 of the Principal Registry Rules and r. 44 of the District Registry Rules; as to the attestation of a bond, in substitution of r. 39 of the Principal Registry Rules and r. 45 of the District Registry Rules; as to sureties, in substitution of r. 40 of the Principal Registry Rules and r. 46 of the District Registry Rules; and as to personal applications, in substitution of r. 17 of the Principal Registry Personal Application Rules and r. 17 of the District Registry Personal Application Rules. The substituted rule concerning sureties deals, *inter alia*, with the position in regard to trust corporations, and rr. 111 and 104 respectively of the Principal and the District Registry Rules are accordingly to be omitted. Rule 47 of the District Registry Rules is to be revoked. New forms are substituted for those annexed to the Principal Registry Rules and the District Registry Rules as specified in the second column of the Third Schedule to the Non-Contentious Probate Rules, dated the 3rd December, 1925, in the case of Nos. 16 and 17 of the Principal Registry Rules and Nos. 17 and 18 of the District Registry Rules. The new draft rules are published by H.M. Stationery Office, price 2d. net.

## The Civil Defence Act.

### I.

THE Civil Defence Act, 1939, did not receive the Royal Assent until 13th July, 1939, its progress through Parliament having been delayed till then by the even more urgent legislation for military preparation for the worst. As we explained when we discussed the Bill, the Act is not a new D.O.R.A., but is concerned with the provision during the present uneasy situation, miscalled "peace," of measures of home defence. The Act does not contain many very serious changes from the original proposals of the Bill, but what there are tend to make the machinery more effective. In these articles we shall endeavour to indicate concisely its effect upon private persons and rights of property.

#### A.—Matters affecting all owners of property.

I. Provision is made in Pt. II of the Act for local authorities to secure premises which are or can be made suitable for public air-raid shelter or for use in the event of war by the local authority in carrying out any of its civil defence functions. The latter term means any functions under the Air-Raid Precautions Act, 1937, or the Civil Defence Act, 1939 : s. 90 (1). A local authority may pick on any building or part of a building for either of these purposes and may post there a notice to such effect : s. 2 (1). Such notice having been posted, the authority is to notify the Minister (as defined in s. 1) and do what is practicable to bring the contents of the notice to the attention of persons having estates or interests in the premises. The notice is to be a local land charge under the Land Charges Act, 1925, s. 15, and registrable accordingly : s. 2 (2). Premises affected by such a notice are called "designated premises" : s. 2 (4).

If the Minister declares that there is imminent "an emergency involving the possibility of hostile attack," the local authority may take possession of designated premises (s. 57 (1) (a)) and may retain it for not exceeding three months under the same declaration : s. 57 (4). The local authority may remove property from the premises, or order the occupier to do so, and if he fails to comply or obstructs the authority he is liable to a fine not exceeding £100 : s. 57 (2). Compensation to persons to be hereafter determined by Parliament is to be paid by the local authority for the owner : s. 57 (3).

That is what happens to designated premises in actual war or an emergency in which war is likely. Part II provides for the preparation of the premises for such user.

As soon as the occupier learns that his premises have been designated he must forthwith serve notice to that effect upon his immediate landlord, and every recipient of such a notice must forthwith serve another on his immediate landlord, and so on : s. 2 (6).

Every person having an estate or interest in designated premises has a right of appeal to the Minister against the designation on the ground that the whole or part of the premises are otherwise required for purposes of public importance or for private air-raid shelter. The appeal must be lodged within fourteen days of the designation : s. 3.

Once the period for appeal has expired, without an appeal being lodged, or after the appeal has been dismissed or abandoned, or earlier with the consent of all persons concerned, the authority may enter the premises, after fourteen days' notice to the occupier, given at any time after designation, or earlier with his consent, for the purpose of executing works to put or maintain the premises in a condition suitable for the purposes for which they are designated : s. 4.

After premises have been designated no structural alteration may be made in them without the leave of the local authority, nor may any works executed under s. 4 be interfered with : s. 5 (1). The penalty for disobedience is a fine not exceeding £50, but it is a defence to a prosecution that the defendant did not know, and had no reasonable grounds for suspecting,

that the premises were designated : s. 5 (2). Upon conviction, the defendant may be ordered to pay for reinstatement : s. 5 (3). If the local authority refuse leave for alterations or fail to give it within six months of application, the applicant may appeal to quarter sessions : s. 5 (1).

By s. 6 (1) the occupier is entitled to compensation by the local authority for interference with his user of the premises during the execution of works under s. 4. And by s. 6 (2) the local authority is to pay compensation in respect of the diminution of annual value by reason of such works. This compensation is payable quarterly in arrear. If the premises cease to be designated, the authority must restore them so far as practicable to their condition apart from the works, and must compensate persons having estates or interests for any enduring depreciation, and occupiers for interference during the execution of the work of restoration : s. 6 (3) and (4).

II. Sections 7 and 8 replace and extend the provisions of the Bill regarding underground air-raid shelters or other underground premises required by the local authority for use in the event of hostile attack in carrying out any of their civil defence functions. The local authority, after giving twenty-eight days' notice may enter on any land to carry out the construction of such underground shelters and entrances to them and ancillary works : s. 7 (1). Such premises may be constructed under a highway, with the leave of the highway authority (if different from the local authority), but without notice to persons interested in the subsoil of the highway : s. 7 (3). Any such underground premises when constructed vest in the local authority with their entrances and any ancillary shafts or works, and the authority has all necessary powers of entry for maintaining them : s. 7 (4). The local authority is to compensate any persons having estates or interests in the land in which the premises are constructed for any damage caused by their construction or maintenance : s. 7 (5). Special provision is made for land belonging to the National Trust, for commons and open spaces, London squares, and land occupied by public utility undertakers : s. 7 (2), (6) and (7); and for construction of underground premises for peace-time user as car parks : s. 8.

III. By s. 9 a local authority may construct public air-raid shelters on highways, and do any necessary works on land adjoining the highway and affix appliances to any building or wall adjoining the highway : s. 9 (1). If the highway authority is not the same as the local authority, the leave of the former is necessary : s. 9 (2); and provision is made for the protection of gas mains, etc., under the highway : s. 9 (4). Notice is to be given to occupiers of any land or building adjoining the highway saying what is to be done, and similar notices are to be posted near the site and inserted in a local newspaper. These notices are to be given fourteen days before the work is begun : s. 9 (3). Compensation is to be paid for depreciation of the property of persons having estates or interests in any land or building adjoining the highway and affected by the construction of the shelter : s. 9 (5). There is, however, no right of appeal against the exercise of the powers of s. 9.

IV. Under s. 58 (7) fire authorities may enter upon and acquire any land for underground water tanks on the same terms as those applying to the construction of underground shelters under s. 7.

V. Under s. 50 the Minister of Health has power compulsorily to acquire any land for carrying out his duty under Pt. VII to take in advance measures to deal with civilian casualties and to combat disease.

VI. By s. 64 any county council, county borough council, metropolitan borough council, or county district council, or the common council of the City of London may compulsorily hire for their civil defence functions any unoccupied land or land occupied by a tenant whose tenancy will expire or can be determined (otherwise than for breach of condition) within three years of the order for compulsory hiring. The section

does not seem to apply to land occupied by the person entitled to the fee simple. In this case, as under s. 50, there is, of course, provision for compensation.

VII. Under s. 57 the Commissioners of Works have power after the Minister has declared the imminence of an emergency involving the possibility of a hostile attack to take possession of any premises which they think in the circumstances ought to be at the disposal of any Government department or other persons acting on behalf of the Crown in a civil capacity. The terms as to duration of possession and compensation are identical with those relating to the taking possession of designated premises by a local authority.

VIII. Under s. 57 the local authority may also take possession of any vehicles in like circumstances and under like conditions, but the leave of the traffic commissioner is necessary unless previous arrangements have been made with him and the owner of the vehicle for its availability to the local authority.

IX. By s. 56 (3) the Minister is empowered to make regulations "for the purpose of securing accommodation" for the civilians transferred under the section from one part of the country to another. The regulations may force owners of premises to provide accommodation and to be responsible for feeding evacuated children. This power only arises when "an emergency involving the possibility of hostile attack" exists or is imminent. And there seems to be no provision for compensation for damage caused by evacuated persons, inconvenience, or even out-of-pocket expenses for food, etc. This seems to be a remarkable state of affairs, especially as occupiers of premises are not to know their precise fate till war is upon them. It may be that a benevolent construction of the Act could enable compensation to be paid, but there are no unambiguous words. To facilitate these plans, the occupier of any premises is bound, on pain of a fine not exceeding £5, to answer any questions the local authority sees fit to ask, for the purposes of the information to be supplied by it to the Minister, regarding his premises and the persons resident in them: s. 56 (2).

(To be continued.)

## Costs.

### COSTS OF ARBITRATIONS.

It is not intended to deal exhaustively with the subject of arbitration costs. The Arbitration Act, 1934, however, effected certain alterations to the law with regard to these costs, and it may be convenient if we consider these alterations briefly.

In the first place, to take the question of interest, there seems to be little doubt but that interest is now payable on costs awarded in an arbitration. It will be recalled that interest is payable on costs awarded under a judgment of the Supreme Court by virtue of the provisions of 1 & 2 Vict., c. 110, ss. 17 and 18, which provide briefly that every judgment debt shall carry interest at the rate of 4 per cent. per annum from the date of the judgment until payment.

It is further provided that "all decrees and orders of the courts of equity, and all rules of courts of common law and all orders of the Lord Chancellor or of the court of review in matters of bankruptcy, and all orders of the Lord Chancellor in matters of lunacy, whereby any sum of money, or any costs, charges or expenses shall be payable to any person shall have the effect of judgments in the superior courts of common law."

Costs awarded under a county court judgment do not, therefore, carry interest, nor do costs payable under a judgment of the House of Lords.

Nor, formerly, was interest payable on costs awarded by an arbitrator, for although an award, by virtue of s. 12 of the Arbitration Act, 1889, might, by leave of the court or judge, be enforced in the same manner as a judgment or order to

the same effect, the fact remained that an award was not a judgment or order within the meaning of s. 18 of the Judgments Act. Consequently, no interest was formerly payable on costs awarded by an arbitrator.

It is provided now, however, by s. 11 of the Arbitration Act, 1934, that "a sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt."

This seems to leave little room for doubt but that where a sum is awarded by way of costs, then that sum shall carry interest from the date of the award to the date of payment. Thus, an arbitrator might make his award in respect of costs in the following words: "I further award and direct that the claimants do pay to the respondents their costs of the reference to arbitration before me, which costs I assess at the sum of £100." In such a case the sum of £100 is "a sum directed to be paid by an award" and clearly should carry interest.

On the other hand, the arbitrator may very well award costs without stating the amount thereof. Thus, he might provide that: "I further award and direct that the claimants do pay to the respondents their costs of the reference to arbitration before me, such costs to be taxed if not agreed." Can it be suggested that because the precise amount of the costs is not mentioned in the award, the party who has been awarded such costs is to be deprived of the interest thereon? The costs, it is submitted, is no less "a sum directed to be paid by an award" because the measurement of that sum is left to a third party, or to subsequent agreement between the parties.

Section 12 of the Arbitration Act, 1934, should be read carefully by those engaged in drafting documents containing an arbitration clause. Thus, it is no common thing for an agreement to provide that in the event of dispute between the parties, such dispute shall be referred to an arbitrator either specifically named or directed to be appointed in a particular manner. Such or similar clauses frequently appear in policies of insurance or in agreements for the hire or carriage of goods.

Section 12, *supra*, states that any provision in any arbitration agreement to the effect that the parties or any party thereto shall in any event pay their own or his own costs of the reference or award or any part thereof shall be void. It is not possible, therefore, in any agreement such as those mentioned above to override the discretion vested in the arbitrator as to how and by whom the costs of the reference are to be paid or borne.

Notice in particular the proviso to s. 12, which is to the effect that nothing in the section shall invalidate such a provision when it is part of an agreement to submit to arbitration a dispute which has arisen before the making of the agreement. If, therefore, a dispute has arisen, as disputes do sometimes arise, where the point involved is rather of academic than of practical importance, and it is agreed to refer the dispute to arbitration, then there is nothing to prevent the parties making whatever arrangements they wish to override the discretion vested in the arbitrator by the Arbitration Act, 1889.

If the arbitrator has failed to make provision as to the payment of the costs of the reference, then any party to the reference may, within fourteen days of the publication of the award, or such further time as the court or judge may direct, apply to the arbitrator for an order directing by and to whom such costs shall be paid, and the arbitrator shall thereupon amend his award by adding thereto the proper directions as to costs: see s. 12 (2).

Notice s. 13 of the 1934 Act, which provides that if an arbitrator refuses to deliver his award except upon payment of his fees, then the court may, upon an application being made, order the arbitrator to deliver his award to the applicant upon payment into court of the fees demanded and the fees

will then be taxed by a taxing master of the court and the court will order such sum to be paid out to the arbitrator as is found to be reasonable. Subsection (3) of s. 13 permits a taxation of fees under the section to be reviewed in the same manner as a taxation of costs.

## Company Law and Practice.

THE only appropriate feature of this article to the present season of the year is the title, which,

**Salvage.** though it may conjure up visions of the sea, in fact relates to the principles on which receivers for debenture-holders are able to borrow money and give charges ranking in priority to the debentures to secure such money; in other words, how they are able to borrow and secure a halfpenny to buy tar and avoid spoiling the ship.

*Greenwood v. Algesiras (Gibraltar) Railway Co.* [1894] 2 Ch. 205, was a debenture-holders' action in the usual form, in which the plaintiffs were expressed to be suing on behalf of themselves and all other debenture-holders.

Prior to the appointment of a receiver, or very shortly afterwards, serious damage had been caused to the company's line in Spain by landslips, and the company's engineers in Spain, fearing that unless the damage was repaired traffic would have to be suspended and the line become liable to forfeiture to the Spanish Government, had employed contractors to repair the damage at an expense of £4,500 borrowed on the security of the undertaking by way of salvage, and by the law of Spain money so borrowed and secured formed a first charge on the railway and might be enforced by the railway being seized.

Further damage to the railway by landslips had occurred or was thought likely to occur, and in these circumstances the company, the defendant in the action, took out a summons asking that the receiver might be at liberty to raise a sum not exceeding £10,000 to repay the £4,500 referred to above and to defray the cost of repairing the damage that had occurred and to pay necessary expenses to keep the line open and to avoid forfeiture, and to charge the money so borrowed with interest at 7 per cent. on the company's property in priority to all other charges.

Kekewich, J., considered that it was very desirable that such an order should be made, but doubted whether he had jurisdiction to make it, as it would, in effect, be making charges in priority to the debentures, the holders of which were not all present before him although formally present for the purposes of the action.

On his suggestion the matter was taken to the Court of Appeal, where it was stated in argument that orders similar to the one asked for had been made in numerous unreported cases, though not in any reported case, and, the plaintiffs supporting the application, the Court of Appeal made the order, the judges thinking that the orders which had previously been made justified it in doing so.

A somewhat similar order was made in *Strapp v. Bull, Sons & Co.* [1895] 2 Ch. 1. In that case the company had been formed to carry out building operations, and, some of its contracts being uncompleted, it got into difficulties. A debenture-holders' action was brought against the company.

Two receivers and managers were appointed and empowered to raise £5,000 as a first charge on the assets of the company in priority to the debentures. A winding-up petition was shortly afterwards presented by an unsecured creditor, and a consent order was made on that petition by which it was ordered to stand over for six months, and it was also by consent ordered that the £5,000 directed to be raised in the debenture-holders' action and interest thereon should be a charge on all the assets in priority to the debentures, that the unsecured creditors should receive second debentures for the amount of

their debts, and that some of them should advance two-thirds of the £5,000 directed to be raised and the plaintiff in the debenture-holders' action should raise the other one-third. It was further ordered that pending the adjournment of the winding-up petition the company should contract no further debts and liabilities.

The money was, in pursuance of that order, advanced by the persons mentioned, and the receivers and managers incurred further liabilities in respect of the carrying out and completing the contracts, and they applied to the court for a declaration that they were entitled to a first charge on the assets of the company.

Vaughan Williams, L.J., refused to make such a declaration, but the Court of Appeal held the receivers and managers to be entitled to it.

In his judgment, Lindley, L.J., refers to the various orders that were made and says it is impossible to say that the receivers and managers were not the receivers and managers of the unsecured creditors as much as they were receivers and managers of the first debenture-holders. He goes on to say: "If once we get to that, and if we once get the persons who advanced this £5,000 out of the category of strangers having rights prior to the debenture-holders and prior to the receivers and managers, it is obvious that the receivers and managers must be entitled to the indemnity . . . which they are *prima facie* entitled to."

It is clear from this, that had the money been advanced by an outsider, the receivers' and managers' right to an indemnity would have had to be postponed to the charge to secure the money so advanced, though it would still have had priority to the first and second debentures.

Lindley, L.J., also remarks that the difficulty caused by the case is attributable to an anxious desire on the part of the learned judge to make a short cut and do justice by orders which are more or less unusual, and perhaps, in form, a little irregular. It is, nevertheless, possible to envisage a scheme of a similar sort being come to by parties interested in a company in a similar position, and the case is of interest as throwing further light on the rights of persons who put up money to try and enable something to be saved from the wreck of a hopelessly insolvent company.

The way in which an order of the kind considered above works is illustrated by the case of *Millicard v. Avill & Smart* [1897] W.N. 162. There the receivers and managers were empowered, for the purposes of the undertaking of the company, to borrow £700 at interest not exceeding 5 per cent. per annum. They overdrew to the extent of £500 from the bank, and then repaid that overdraft out of assets of the company in their hands, and subsequently without obtaining any further leave to borrow overdrew a further £700, and it was held that they were entitled to do this and that the power of borrowing conferred on them by the order was not *pro tanto* exhausted by the first overdraft, and on its repayment they were then entitled to borrow up to the full amount authorised.

It is not in every case, however, that an order empowering the receiver and manager to raise money for salvage will be made. The matter must, in order to justify the making of an order, be one of urgency, having regard to the fact that all the persons interested are not before the court.

In *Securities Properties Investment Corporation v. Brighton Alhambra* [1893] W.N. 15, a receiver and manager of a theatre had been appointed in a debenture-holders' action, and application was made for an order enabling him to raise money secured by a charge having priority to the debentures, and also to certain prior mortgages, to enable the theatre to be kept open, and there was evidence that if it was allowed to be closed there would be depreciation in the value of the property of about £5,000, but there was no evidence to show that on a sale of the property there was likely to be even enough money to satisfy the mortgages, which had priority

over the debentures, and Kekewich, J., refused to make the order asked for.

In the judgment there are a number of observations on the principles which guide the court in making such orders. He held that there was no evidence that any expenditure would result in substantial good to the debenture-holders, or that there was any prospect of an advantageous sale sufficient to justify any expenditure at all.

He points out that, in one sense, all expenditure made for the purpose of carrying on a business must be more or less speculative, and unless some speculation was allowable no money could ever properly be authorised to be raised, even in a case of urgency such as was recognised by the court.

The court must, however, look forward to an advantageous sale, i.e., a sale advantageous to those on whose behalf the court purported to act : in this case the debenture-holders.

He observed that he entertained great difficulty in making a prospective order sanctioning expenditure on the ground of salvage because of the difficulty of saying beforehand what was really necessary for the preservation of property as one could not generally calculate in advance the action of mankind or the elements.

Where a case is, however, really urgent, and the expenditure is necessary to prevent property being destroyed or forfeited, an order will be made. It will be remembered in the case last referred to the anticipated damage was to be caused by depreciation, which clearly must depend on a number of incalculable factors, and not, as in the case earlier referred to, where there was a danger of the whole property being lost to the company either by physical destruction or by forfeiture. Where there is a danger of this kind of thing happening, the court will sanction payments by way of anticipation, and will not cast on litigants or officers of the court the responsibility of acting or forbearing on their own judgment.

## A Conveyancer's Diary.

It is well known that an *agreement* to pay an annuity without deduction of income tax is void by reason of the Income Tax Act, 1918, All Schedules Rules, 23 (2). Accordingly, if A covenants with B to pay B an annual sum of £100 free of income tax, his liability to B is discharged by a payment of £75 a year (while income tax is at 5s. in the pound, as is assumed throughout this article for purposes of convenience). And various familiar devices have been invented in order to make it possible for A validly to covenant to pay £100 a year free of tax, i.e., so that B receives a hundred spendable pounds a year from A.

This rule applies in terms only to annuities arising by agreement. Where an annuity arises in some other manner, e.g., under an order of the divorce court or under a will, it does not apply, with the consequence that if A bequeathes to B (or is ordered to pay to B) an annuity of £100 a year free of tax, A's trustees (or A) must actually pay B £100 per annum. This payment will be made, of course, out of income which will have borne tax in the hands of A's trustees and will, in B's hands, be really a payment of £133 6s. 8d. less tax at 5s. in the pound. B will, accordingly, return the gross sum of £133 6s. 8d. in making his annual statement to the income tax inspector. If that is his only income, he will not be liable to the full standard rate of income tax and, accordingly, he will recover something from the Crown. Indeed, if the sum taken in the example is the whole of B's income, he will be liable to practically no tax at all and over £30 will be recoverable by him from the Crown. It has been decided in *Re Petit* [1922] 2 Ch. 765 that B is not entitled to retain the sum recovered, but is accountable for it to the persons who are liable to pay the annuity. An unsuccessful attempt has recently been made to challenge this doctrine (*Re Eves*, 83 Sol. J. 623). The principle of the rule is that

the intention of the testator is that B is to have out of the estate £100 a year to spend after the income tax payable in respect of it is paid. If the tax is reduced by allowances, so much the better for the estate. If B were permitted to keep the sums repaid he would be receiving £130 odd a year and not £100 a year.

The question is therefore comparatively simple when the tax-free annuity is the recipient's only income. What does seem more difficult is the destination of the repayments in a case where B has other income. If he has a tax-free annuity of £100 and a gross income from investments of £100, that is a taxable income of £233 (grossing the annuity up). He will have had £33 deducted at source in respect of the annuity and £25 in respect of the investments (making £58 in all). His liability to tax (after the free allowance of £100) is 1s. 8d. in the £ on £133; that is about £11. Accordingly £17 is recoverable. How is it to be divided? The question is which part of B's income the annuity is. If it is the lowest £133, it is practically not taxable at all, and about £31 of the sum repaid is repayable in respect of it, and so goes to the estate of the testator. If it is the upper £133, it is all taxable at 1s. 8d. in the £, and a good deal less of the repayment is assessable to it.

The true view is probably to be deduced from an observation of Romer, J., in *Re Petit* to the effect that the real effect of the statutory provisions for allowances, etc., is to reduce the over-all rate of tax payable. Thus, in the example given, B is liable to pay about £11 on a gross income of £233, i.e., just about 1s. in the £. The sum repaid is the difference between tax at the standard rate and tax at the operative rate of 1s. in the £, and it is divisible between A's estate and B himself in the proportion of 133 : 100. Such seems to be the proper application of the rule in *Re Petit*. More complicated cases could, of course, be imagined, but seem susceptible of the same reasoning.

I HAVE recently been asked what the estate duty position is in a case where a testator paid within three years of his death the accruing instalments of allowances to his issue and pensions to old servants, a matter on which some confusion of mind seems to exist. The

**Estate Duty on Allowances inter vivos.** law does not, however, appear to be in any doubt. All voluntary dispositions of capital or income within three years of death are *prima facie* aggregable. But certain of such dispositions are exempted from aggregation by Finance (1909-10) Act, 1910, s. 59 (2), namely, "gifts which are made in consideration of marriage or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased and to have been reasonable having regard to the amount of his income, or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate £100 in value or amount."

In this rule there is no distinction between capital and income, making the one aggregable and the other not so. And there are three different grounds of exemption. First, all gifts, whether of capital or income made in consideration of marriage are exempt. Second, all gifts, whether of income or capital, not exceeding £100 within the three years to any one donee are exempt. Third, gifts are exempt if they fulfil two conditions, viz.: (1) they must have been part of the normal (i.e., habitual) expenditure of the deceased; (2) they must have been reasonable having regard either to the income of the deceased or to the circumstances. The Commissioners must be satisfied on both points. It is very difficult to see how these requirements could be fulfilled in the case of a capital gift or series of gifts. On the other hand if, in spite of making large habitual allowances, the deceased more or less lived within the income it could hardly be said that the second requirement was not fulfilled. And, so far as the recipients are concerned, nothing could be more reasonable than to give pensions to old servants, or to make even large allowances

to one's issue, especially where the latter will be substantially better off after one's death. What would not be exempt would be non-recurrent dispositions, dispositions which more than exhaust one's income, or gifts to persons who have no moral claim upon one.

## Landlord and Tenant Notebook.

THE history of the tenant's covenant to pay outgoings can well be compared to the struggle for supremacy waged between the inventors of high explosives and the inventors of armoured plating. The contest began when Parliament started the practice of authorising local authorities to compel property owners

**Liabilities Imposed by Local and Private Acts.** to execute works, in default of which the authorities might execute the works themselves and collect the cost from the defaulters. There were a number of border-line cases, difficult to reconcile, before draftsmen exercised their skill and imagination so efficiently that the modern covenant to pay outgoings will usually be found to cover everything the law will allow it to cover. Nowadays, the fate of the covenanting tenant rarely depends on whether the covenant includes or omits some such word as "duties," or "outgoings," or "impositions": the test is whether the governing intention is that the landlord is to get his rent clear of all deductions. This intention is readily gleaned from the modern covenant, though it has undoubtedly given covenantors some unexpected shocks: e.g., in *Re Warriner, Brayshaw v. Ninnis* [1903] 2 Ch. 367, the tenant who took a house for three years at £54 a year hardly expected to have to pay, for the reconstruction of the drains pursuant to s. 4 of the Public Health (London) Act, 1891, the sum of £118. Comments on this state of affairs, and suggestions for suitable modifications of the covenant in favour of the tenant, are to be found in Walfords' "Hints on Draft Leases."

At the same time, we must remember that Parliament also commands the services of skilled and imaginative draftsmen, and that impositions created by local and private Acts have been known to elude (speaking from the covenantee's point of view) the covenant. Thus, in 1892, a statute known as the Lea Valley Drainage Act was passed, authorising certain commissioners to levy rates in each and every half-year on all lands within a specified district, to be levied, subject to the provisions of the Act, on the occupiers of such lands; and the amount from time to time paid in respect of such rates by any occupier who was not at the same time the owner might, in the absence of agreement to the contrary, be deducted by him from any rent or other moneys from time to time payable by him to the owner. In *Vestry of Mile End Old Town v. Whitby* (1898), 104 L.T. Jo. 343, the action was for the balance of rent due under a yearly agreement under which the defendant held certain land in the specified district. The defendant, though under covenant to pay "all outgoings," had deducted the drainage rates from rent. It was held that he was entitled to. A rate of a new kind, it was held, would not be covered by a general agreement to pay all outgoings.

It was also held in the above case that the tenant was entitled to deduct one year's rates, but not more. The reasoning of the judgment is not recorded, but I assume that this would be the effect of the qualification expressed by "from time to time." Local Acts have been known to be rather careless on this point. Thus, in *Dawson v. Linton* (1822), 5 B. & Ald. 521, it appeared that a local statute dealing with drainage in the Fen District provided for a drainage tax to be payable by tenants, who might deduct the same from rents. Sanctions included a right to distrain "on the goods and chattels which should be found on the lands charged with the tax in arrear; and if the same should be untenanted, or no sufficient distress could be found, the lands chargeable should remain as a

surety and might be taken possession of and let in discharge of the tax." The plaintiff had been the defendant's tenant, had left after paying his rent in full, but had omitted to pay the tax. He also left, by arrangement with the incomer, a stack of wheat on the premises; and when the collector applied in vain to the incomer for the tax accrued due in the plaintiff's time, this wheat was distrained. It was argued that he should have sued not his landlord, but the succeeding tenant, who was liable, and could have paid the tax and deducted the amount from the next rent; but held that the plaintiff could recover from the landlord as being the person on whom the tax ultimately fell. Abbott, C.J., also thought that the tax was payable by the tenant in whose time it became due and who received the benefit of the drainage.

The facts of *Spencer v. Parry* (1835), 3 Ad. & Ell. 331, bear some slight resemblance to those of the last-mentioned case. A local Act authorised the overseers of the Parishes of St. Giles in the Fields and St. George's, Bloomsbury, to collect rates from the landlords of certain dwelling-houses or from their rent collectors. The plaintiff had let such a house to the defendant at an agreed rent "free and clear from all land tax and parochial rates," and for the period of one year; at the expiration of that period the defendant left, and at that time rates had been demanded but not paid. They were demanded of and paid by the next tenant, whom the plaintiff reimbursed; and the action he now brought was for money paid to the use of the defendant. It was held that as the succeeding tenant had no claim against the defendant, the plaintiff had not paid the money to his use.

To show that difficulties may arise in applying special local Acts, even in modern times, one can refer to the case of *Holborn and Frascati, Ltd. v. London County Council* (1916), 85 L.J. Ch. 266. The enactment was the L.C.C. (Improvements) Act, 1899, under which the thoroughfare subsequently named Kingsway was constructed. Besides authorising clearance, it empowered the council to impose a special rate on premises the value of which was increased. The machinery provided was very elaborate. There was to be assessment, to which those interested might object; and they also had a right to serve a notice demanding that the council buy their interests, to which the council might reply by refusing to buy provided they abandoned the charge. As between landlords and tenants, apportionment could be settled by arbitration if not agreed.

The plaintiffs held a long lease of the Holborn Restaurant. The charge in respect of these premises was assessed at £240. Thereupon the lessors gave notice of electing to sell, and the council abandoned the charge against them. The plaintiffs, possibly thinking that this let them out of it, took no steps to have the amount apportioned. They were somewhat surprised to receive a demand for the whole £240, and sought a declaration that the charge had been wiped out when the council had abandoned it as against the freeholders.

The plaintiffs' contentions were, Neville, J., held, based on a confusion between "land" and "estates in land." It was clear that the section gave the council a charge which overrode all other interests. The provisions for recovery of what was due enabled them to proceed summarily against any person interested. It was impossible to say that the charge had gone because of the abandonment against one such person, even if he be the freeholder. The provision for apportionment did, perhaps, make a plausible argument in the plaintiffs' favour; but when one considered that it conferred no rights to apportionment on the London County Council, the result was that it did not affect their charge or their right to recover the amount of the assessment.

*The Times* last Tuesday contained a notice of the death at Weybridge, on the 9th August, of Mr. John James Roberts, whose loyal and valued services for over sixty years as clerk and subsequently as Admiralty Manager with Messrs. Pritchard and Sons are gratefully remembered by the surviving partners.

## Our County Court Letter.

### WARRANTY ON SALE OF CATTLE.

In *Baker v. Cole*, recently heard at Okehampton County Court, the claim was for £11 12s. 6d. as damages for breach of warranty. The case for the plaintiff was that he had bought two cows from the defendant for £23, in reliance on a representation that they were both in calf, and that one had already had two calves and the other five. The cows were delivered after dark, and it was subsequently discovered that they were much older than the plaintiff had been led to understand. The younger cow was tested and found to be a barren. The defendant denied having given a guarantee, as no warranties were ever given on the sale of an animal for less than £12. His Honour Judge Thesiger was satisfied that a warranty was given, and that the animals, according to the evidence of a veterinary surgeon, were much older than the age alleged by the defendant. Judgment was given for the plaintiff for the amount claimed, with costs, payable at £3 per month.

### CONVERSION OF GOODS.

In a recent case at Bournemouth County Court (*County Furnishing Stores v. West*) the claim was for £55 8s. as damages for conversion of furniture. The plaintiffs' case was that the furniture had been let on a hire-purchase agreement to a householder, who had paid a deposit of £5 10s. The balance due was then £63 14s. 6d., but the furniture subsequently disappeared from the house of the hirer, who had since gone, leaving no address. The defendant was subsequently interviewed, and his explanation was that, having no idea that the goods were comprised in a hire-purchase agreement, he had bought them in the course of his business as a furniture dealer. The goods were subsequently sold to customers, but, as the defendant kept no books, he could not trace the various articles. An offer of £10 in settlement had been rejected by the plaintiffs. The defendant's case was that he gave a fair price to the hirer, who represented that he was the owner of the furniture, and was selling it prior to turning his house into flats. His Honour Judge Cave, K.C., commented adversely on the transaction between the hirer and the defendant. The plaintiffs were entitled to damages, and, after making a deduction of 10 per cent. for depreciation, judgment was given in their favour for £52 14s., with costs.

### THE CARE OF MENTAL PATIENTS.

In *Walford v. Levy*, recently heard at Barnet County Court, the claim was for £24 19s. 6d., viz., £12 12s. for the maintenance of the defendant's mother in a nursing home, £2 2s. for the issue of a "temporary certificate" for her removal to another home, and £10 5s. 6d. as the cost of laundry and the repair of damage. The plaintiff's case was that the patient was received on the 11th February. As she became violent, it was necessary to remove her, and an account was rendered on the 21st February for a week's maintenance and the other items as above. The defendant's case was that, although he received a form, he did not sign it, as he was not in a financial position to pay the charges himself. Moreover, the plaintiff himself requested the patient's removal, after only three and a half days, and the defendant was not liable for a full week's charges. The alleged damage might have been minimised if precautions had been taken, as the patient recovered after five weeks' treatment elsewhere. His Honour Judge Hancock held that the defendant was liable for the maintenance of the patient, although it was to be hoped that she or her estate would reimburse him. As the plaintiff had requested her removal, he could only recover half a week's maintenance, viz., £6 6s. The item for a "temporary certificate" was disallowed, as the plaintiff had merely signed a piece of paper. Judgment was given for the plaintiff for £15 15s., with costs.

## Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.]

### Solicitors' Accounts.

Sir.—There seems to be a break in the chain of logic in the recently published Report of the Parliamentary Select Committee on the Solicitors Bill, 1939. The argument in cl. 3 of the Report is:—

"Nor can any audit guard against the suppression of items in the accounts or other fraudulent devices. But it will go a long way towards making solicitors realise the importance of keeping accurate accounts and will thus check looseness in accounting which in itself may tend to defalcation. It will also go far to stop such prolonged courses of defalcation as have on occasion taken place in recent years. It is objected that the requirement will impose a new burden on solicitors. But at present it may be taken that all solicitors of standing have an audit of their professional accounts at least once a year, and though there are no doubt solicitors in small practice with limited earnings to whom the extra cost of the audit may appear a hardship, it is obvious that the smaller the business the less will be the cost of the audit, and in many cases the audit may be very desirable to prevent loose methods of book-keeping and a failure to comply with the account rules. In any event, the public interest and indeed the interest of the profession itself must prevail."

But on referring back to cl. 2 of the Report we find that the Committee's recommendation is merely that every practising solicitor "should have his professional accounts examined at least once in each year by a qualified accountant." The word *examined* is repeated in the section recommended for insertion in the Act of Parliament, but its use may give rise to misunderstanding as to the extent of the prescribed examination. It seems essential that the word "audited" should be substituted.

The importance to the profession of this proposed reform is that it will considerably lighten, and in time may even remove, the burden which solicitors are asked to assume and which they will willingly assume, under a proper system, of making contributions to a victims' relief fund. It is thought by many that such contributions should not be *per capita* but should be proportioned to the average amount of clients' money which each solicitor has in hand during the year of report. This would ease the burden upon newcomers or the smaller practitioners.

King William Street, E.C.4.

CHARLES L. NORDON.

16th August.

## Books Received.

*Maddock's Civil Defence Act*, 1939. By LESLIE MADDOCK, M.A., B.C.L., of the Inner Temple and the Midland Circuit, Barrister-at-Law. 1939. Royal 8vo. pp. xlvi and (with Index) 157. London : Eyre & Spottiswoode (Publishers), Ltd. 12s. 6d. net.

*Final Report of the Inter-Departmental Committee on the Rehabilitation of Persons Injured by Accidents*. 1939. London : H.M. Stationery Office. 3s. 6d. net.

Volume 17 of the "Guide to Current Official Statistics," relating to the whole of the official statistics published in 1938, is now ready. It contains 404 pages, and is obtainable from the sale offices of H.M. Stationery Office, or through any bookseller, for 1s. (by post 1s. 5d.). In this volume every subject on which official statistics are available is included in an alphabetical list, and on reference to the appropriate heading, the inquirer will find descriptions as regards date, detail and mode of analysis, of all the statistics available, together with a note of the official publications in which they appear.

## To-day and Yesterday.

### LEGAL CALENDAR.

**14 AUGUST.**—The hardships of debtors constituted one of the great blots on the law in the eighteenth century. Attempts to modify this state of things by statute were often defeated by the lawyers in Parliament, and in 1785 the failure to pass a measure of relief rendered desperate the unfortunate men confined in the King's Bench prison. By some means they procured a mortar and several pounds of powder, and prepared to blow a hole in the wall. On the 14th August, they were just setting fire to the train when the plot was discovered, "and their diabolical purpose frustrated."

**15 AUGUST.**—Probably the hopeless misery of a debtor's life accounts for the fate of Edmund Goodrich, condemned at the Gloucester Assizes on the 15th August, 1735, for the murder of a bailiff who had tried to arrest him for a debt of £35 10s. A robber, two housebreakers and two unmarried mothers who had killed their babies, also received sentence of death. A man who had pulled down the pulpit and broken the pews of a meeting-house was ordered to be confined as insane.

**16 AUGUST.**—On the 16th August, 1803, John Hatfield, a notorious adventurer, was condemned to death at Carlisle Assizes for forgery.

**17 AUGUST.**—On the 17th August, 1923, Lord Sterndale was found dead in his room. The previous day he had spent very actively in a hayfield at King Sterndale, a small Derbyshire estate which had been in the hands of his family since the days of his great grandfather. He had retired to bed seemingly in the excellent health which he always enjoyed and which had made him a keen cricketer, an ardent bicyclist, a follower of a Cheshire pack of beagles and an excellent mountaineer. He was Master of the Rolls from 1919 till his death.

**18 AUGUST.**—Old Richard Roupell, having made a fortune as a lead melter, set about investing in estates in the Home Counties. Before he married his wife he had had by her a son, William, whom he educated as an attorney, and in whose hands he came to leave most of his affairs. When he died a will was produced leaving all his property, worth £200,000, to his wife. William went on managing it, lived universally respected and entered Parliament. In five years a crash came. He had dissipated the whole fortune, and it turned out that he had forged the will besides the conveyances of several estates supposed to have been sold to unsuspecting purchasers during his father's life. The eldest legitimate son now began an action as heir-at-law to recover one of these. The case came on at Guildford Assizes on the 18th August, 1862, and a hush fell on the crowded court when William came forward to prove the forgeries.

**19 AUGUST.**—His cross-examination lasted till the 19th August. The paradoxical situation was that a wronged man, with the aid of the man who had wronged him, was pursuing a third person who had never done him harm. The plaintiff was anxious to prove his chief witness a forger and a perjurer. The defendant had to show that that witness, who had unscrupulously defrauded him was not such a scoundrel as he described himself. Small wonder that the case ended in a compromise. A month later William was sent to penal servitude for life.

**20 AUGUST.**—The trouble started when Mr. Jackson jocularly slapped Major Glover on the back in the playhouse. In return the Major equally jocularly tapped him with a switch, but he did not see the joke. In spite of the Major's protests he insisted that they should adjourn at once to a coffee-house to fight. The duel ended

fatally for Jackson, who died exonerating his opponent. On the 20th August, 1760, at the Lancaster Assizes, the Major was acquitted of murder, but convicted of manslaughter and at once discharged.

### THE WEEK'S PERSONALITY.

If John Hatfield had lived to-day the press would probably have put him into that elastic category, the "Mayfair man," for, though he began life as a commercial traveller, he made contact with high life quite early by marrying the natural daughter of Lord Robert Manners, who was so impressed with his demeanour as to give him £1,500. Describing himself as a near relative of the Rutland family, he lived luxuriously in London till money and credit were gone. Then, abandoning his children, he deserted his wife who died of grief. Imprisoned for debt, he spun a plausible tale to the Duke of Rutland who paid £200 to release him. When the Duke became Lord Lieutenant of Ireland in 1784, Hatfield followed him to Dublin and lived on credit by giving out that he was a relation of his house. When he was again imprisoned the nobleman hushed things up by paying his debts and sending him back to England. Further impostures landed him again in prison for debt till a lady of fortune procured his release and married him. Once more he lived magnificently in London till, amid increasing difficulties, he abandoned his second wife. He reappeared in Cumberland handsomely equipped as the Hon. Alexander Hope, M.P. Finding that a local beauty, the daughter of the landlord of the "Fish Inn," at Buttermere, was also a financial prize, he proceeded to marry her. When, at last, he was unmasked, he at first evaded arrest, but eventually he was condemned for forgery, dying courageously at Carlisle.

### POCKET-PICKING IN COURT.

In Cairo recently a lawyer sitting near the dock missed first his handkerchief and then his wallet. It was eventually found that the prisoner, a well-known pickpocket, had been putting in a little practice to amuse himself. Soon after Lord Campbell was called to the Bar he had his pocket picked by an ungrateful malefactor whom he had successfully defended. By the time he discovered his loss his client had already been discharged. He was just commencing his law reporting career and, amidst the merriment caused by the incident, the judge asked "Does Mr. Campbell think that no one is entitled to take notes in Court except himself?"

### A LESSON IN CARE.

The great Sir Thomas More once enlisted the help of a notorious cutpurse to help him to play a practical joke with a moral on a tiresome old justice "who was wont to chide poor men that had their purses cut for not keeping them more warily," saying that their negligence was the cause that there were so many thieves brought to the Old Bailey. The day before that particular cutpurse was due to come up for trial, More promised to speak for him if he could get the old justice's purse as he sat in court. In due course the man was arraigned and declared that he could excuse himself fully if he might speak privately with one of the bench. Proceedings being less formal then than now, he chose the old gentleman, and while he whispered in his ear he cunningly cut his purse. After he had gone back to his place More immediately suggested that those in court should contribute to a subscription for a needy fellow who had been acquitted and himself set a liberal example. The old justice expressed his willingness to give a trifle, but to his astonishment found that his purse had gone, though he was sure he had it when he took his seat in court. By the time he was thoroughly mystified and angry More told the thief to give him back his property and advised him not to be such a bitter censor of other men's negligence since he could not keep his purse safe while presiding as a judge.

## POINTS IN PRACTICE.

**Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

**Leaseholder Purchasing Freehold Reversion—RIGHT TO A DECLARATION AS TO MERGER IN HIS CONVEYANCE.**

*Q.* 3660. We act for the vendor of the freehold reversion of certain property. We are informed by the purchaser's solicitors that the purchaser already owns the leasehold interest, having acquired it by an assignment from the previous leaseholder, but the draft conveyance which has been submitted to us for approval by the purchaser's solicitors contains no recitals showing how the leasehold interest devolved upon the purchaser and such title is, of course, unknown to us. The draft conveyance (which recites the lease) contains a clause as follows: "The Purchaser (in whom the residue of the term of years granted by the said Lease is now vested) hereby declares that the said term of years granted by the said Lease shall merge and be extinguished in the fee simple of the premises hereby conveyed." We, however, deleted this clause, as our contention is that, if the term is in fact vested in the purchaser, it will merge and if it is not, it will not. The purchaser's solicitors replied that the question of merger depends upon the intention of the party concerned, and, although this intention may either be expressed or implied, they preferred to have it expressly stated, and referred to "Halsbury," 2nd ed., vol. 27, p. 812. They also stated that the vendor is not concerned with this clause, as it is a declaration only by the purchaser. We replied to this by saying that the equitable rule now prevails and merger is not recognised as having taken place contrary to the intention expressed or implied of the parties. Furthermore, we were not prepared to investigate the title of the purchaser to the leasehold interest, as we would be bound to do if the clause were to remain in the conveyance, for in such case the vendor would be estopped from denying the title of the purchaser to the leasehold interest. Will you please give us your opinion as to whether the purchaser's solicitors are entitled to insist on the retention of the clause in the conveyance, or whether we are correct?

*A.* We express the opinion that the purchaser is not entitled to insert in his conveyance anything not directly germane to his purchase (and he is buying a freehold subject to a lease which he *happens* to possess) and which might prejudice his vendor. Merger in equity is a matter of duty or intention. We take it there is no question of duty. It is not necessary for the intention to appear on the face of the conveyance; it can in the future be proved by any admissible evidence. We suggest, then, that our subscriber's attitude is reasonable and correct and that the purchaser must preserve evidence of his intention to effect merger in some other manner.

**Search against Mortgagees.**

*Q.* 3661. I should be glad if you would kindly let me have your opinion on a small point which, in these days of building society advances, arises very frequently. There is no doubt that, in theory, prior to the completion of a purchase, the solicitors acting for the purchaser ought to search in the Registry of Land Charges under the Land Charges Act, 1925, against every estate owner of the property since the 31st December, 1925. I am, therefore, under an obligation to search against a building society when the vendor has mortgaged the property by *demise* and the mortgage is discharged by him immediately prior to completion. The

point upon which there is some doubt in my mind is this: If the vendor has mortgaged the property to a building society *by way of legal charge* and then discharges the mortgage immediately prior to completion, should a search be made against the building society? My contention is that a search is unnecessary as the building society has never been an estate owner and, therefore, it has been impossible for anything to be registered against it.

*A.* It is believed that, in practice, searches are not usually made against mortgagees unless they are selling under their powers. Theoretically, however, even a mortgagee by legal charge seems to be an estate owner by virtue of the definition clause of legal estate in L.P.A., 1925, though it is admitted that it is possible to put another interpretation on the clause. The editor of the recent edition of "Hood and Challis's Property Acts" definitely says the interest created by a legal charge is a legal estate: note to s. 87.

**Camping Sites on Farm.**

*Q.* 3662. A client of mine, who is a farmer, has in the lease of his farm the following covenant: "Not to assign underlet or part with the possession of the said premises or any part thereof without the previous licence in writing of the landlord." In recent years, my client has, during the summer months, allowed occasional campers with cars and caravans or tents on some of his land for which he makes a charge of 1s. per night. My client, however, continues to use these fields for grazing, etc., in spite of the presence of the campers. My client's landlord contends that the above actions of my client constitute a breach of the above-mentioned covenant and threatens to forfeit the lease if the acts are continued. In my view the campers are merely licensees and the permission given by my client does not constitute a sub-letting or parting with possession. I shall be glad of your opinion, with any authorities supporting it, on the following points: (1) Has a breach of the before-mentioned covenant been committed by my client's acts as above in relation to campers? (2) If so what course, if any, can my client adopt in order to enable him to permit occasional campers without committing a breach of the above covenant?

*A.* The fact that the farmer continues to use the fields for grazing, in spite of the presence of the campers, rebuts the allegation that he has underlet or parted with possession of the premises. The questioner is correct in his view that the campers are merely licensees, and therefore: (1) No breach of covenant has been committed; (2) Permission can be given to campers as before, and no change in procedure is necessary.

**Agricultural Tenancy.**

*Q.* 3663. A landowner is desirous of disposing of a small portion of land on a farm to the local council, for use as a housing site. The tenant of the farm is under notice to quit, expiring Michaelmas next. Please state whether the notice will be in any way prejudiced or imperilled by the contemplated sale, having in view the provisions of the Agricultural Tenancies (Notice to Quit) Act.

*A.* If this farm is held on a tenancy from year to year, the notice to quit will become null and void under the Agricultural Holdings Act, 1923, s. 26, which reproduces the Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919, as amended by the Agriculture Act, 1920.

## Notes of Cases.

### Court of Appeal.

#### **Bradford Third Equitable Benefit Building Society v. Borders (No. 2).**

Greene, M.R., MacKinnon and Finlay, L.J.J. 10th July, 1939.  
PRACTICE—APPEAL—OFFICIAL SHORTHAND NOTE OF LONG CASE—APPELLANT UNABLE TO AFFORD TRANSCRIPT—EFFECT—R.S.C., Ord. LVIII, r. 11.

The defendant in the action of *Bradford Third Equitable Benefit Building Society v. Borders*, 83 SOL. J. 154, appealed from so much of the decision as dismissed her counter-claim for damages for alleged fraudulent misrepresentation. The hearing lasted a considerable time, and Bennett, J., refused to give a direction to enable her to obtain a transcript of the shorthand note at the expense of the public funds. The Court of Appeal affirmed his refusal (*Ex parte Borders*, 83 SOL. J. 416). The defendant then presented a petition to the House of Lords by way of appeal from this decision stating that she was in poor circumstances and unable to provide the three official copies of the transcript of the evidence (costing over £200) required for the use of the Court of Appeal. The Appeal Committee of the House of Lords refused leave to appeal on this point, but intimated that there was no power in any court to order copies of the transcript to be deposited before the hearing of an appeal and that they were sure the Court of Appeal would find a way out of the difficulty. The plaintiffs now applied by motion for an order that the defendant should give £150 security for the costs of her appeal. The costs of her counter-claim had been taxed at £1,054 1s., and this sum due from her to the plaintiffs had not been paid. Greene, M.R., said that the application must be dismissed; it was out of time and no relevant reason had been shown for not making it before. Counsel for the defendant now applied that the case might proceed without a transcript. He added that inquiries would be made whether it would be possible to have those portions transcribed which were relevant to the appeal.

GREENE, M.R., said that Ord. LVIII, r. 11, related to the bringing before the Court of Appeal of evidence in the court below. The scheme under which official shorthand notes were taken at a trial ("Annual Practice," p. 1276) formed no part of the Rules of Court and had no statutory force. The production of the transcript would be normal, but cases might arise where for good reasons this was not possible. The court must decide in each case whether the manner in which it was proposed to bring the evidence before it was "expedient" or not. When an appeal raised issues of fact, it was for the appellant to satisfy the court that the decision on those issues had been wrong. If the materials supplied by him were insufficient to enable the court to act, the appeal would be unsuccessful. The Court of Appeal was not entitled to refuse to hear an appeal merely on the ground that there was no transcript of the official shorthand notes among the papers before it. If the materials an appellant furnished were inadequate the necessary results must follow. There was no need for an application beforehand for leave to bring those materials before the court, but it would be most desirable for any appellant proposing to conduct an appeal in that way to indicate in sufficient time to the other side the material which he proposed to produce. In such cases Ord. LVIII, r. 11, must be observed, and in accordance with it a copy of the judge's note must be furnished. In view of the present system with regard to shorthand notes, the judge's note would not usually be so full as formerly. This appellant should furnish on the hearing of the appeal whatever materials she had. If on those materials the court could deal with the issues raised, it would do so.

COUNSEL: *Hewins; Sir Stafford Cripps, K.C., and Lewes.*  
SOLICITORS: *Henry Bousted & Sons, for J. Eaton & Co., of Bradford; W. H. Thompson.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

#### **Perkins v. Hugh Stevenson & Sons, Ltd.**

Greene, M.R., MacKinnon and Finlay, L.J.J.  
19th July, 1939.

WORKMEN'S COMPENSATION—WEEKLY PAYMENTS IN RESPECT OF ACCIDENT—EFFECT ON RIGHT TO PURSUE OTHER REMEDIES—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 29 (1).

Appeal from Hilbery, J.

In September, 1937, the plaintiff, who was employed by the defendants, sustained injuries in respect of which he claimed compensation under the Workmen's Compensation Act, 1925, and was paid certain weekly sums thereunder. The payments and the receipts given were not in any way qualified. In November, 1937, after eight payments had been made, the plaintiff's solicitors wrote to the defendants stating that the payments had been accepted without prejudice to his claim at common law or under the Employers' Liability Act and that future payments would be so accepted. The defendants did not accede to this view, and on the making of future payments by them a clean receipt was given. In March, 1938, the plaintiff commenced the present action claiming damages for negligence or breach of statutory duty or alternatively under the Employers' Liability Act, or alternatively under the Workmen's Compensation Act. The payments made by the defendants continued till October, 1938, when it seemed that the plaintiff had recovered. Hilbery, J., found as a fact that when the plaintiff made his claim for compensation he did not know of his right to elect, under s. 29 (1) of the 1925 Act, to bring proceedings outside the Act. He held, however, that as the plaintiff had received compensation under the Act he could not recover in these proceedings.

GREENE, M.R., dismissing the plaintiff's appeal, said that he would first deal with the question of the effect of the claim for and payment of compensation without regard to the effect of the letter. The second part of s. 29 (1) exempted employers from liability to pay compensation both under the Act and outside it to the same person. The employers' liability for compensation under the Act could be discharged (1) by satisfaction of it out of hand, or (2) by the workman obtaining an award for compensation. An employer was made liable just as much by acceding to a claim as by having an award made against him. If he paid the compensation claimed and afterwards the workman recovered damages at common law, he would have paid compensation both under the Act and outside it, the very thing provided against by s. 29 (1). As to the effect of the letter, the condition that future payments were to be made without prejudice had not been accepted by the defendants, and as clean receipts for subsequent payments had been given after the plaintiff knew of his right to elect under s. 29 (1) he must be taken to have exercised that option by electing to recover compensation under the Act.

MACKINNON and FINLAY, L.J.J., agreed.

COUNSEL: *Laski, K.C., and D. Wilson; C. Henderson.*

SOLICITORS: *Murray Napier & Co.; W. S. Eastburn.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

### Appeals from County Courts.

#### **Holt v. Dawson.**

Scott, Clauson and du Parcq, L.J.J. 17th July, 1939.

LANDLORD AND TENANT—RENT RESTRICTION ACTS—KEY GIVEN TO AGENT OF LANDLORD—ACTUAL POSSESSION—REGISTRATION OF PREMISES AS DECONTROLLED—MISTAKE IN DATE—EFFECT—RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1938 (1 & 2 Geo. 6, c. 26), s. 4.

Appeal from Manchester County Court.

Before March, 1938, certain premises controlled by the Rent Restrictions Acts were let to a tenant at 14s. 2½d. a week. Having decided in that month to leave the premises, she

suggested to the agent of the landlord, the defendant, that her nephew, the plaintiff, should succeed her as tenant. She was informed that the landlord would only be willing if the house were decontrolled and that the new rent would be 15s. 6d. a week. On the 12th March the tenant gave notice determining her tenancy and handed over her key to the agent at his office. Afterwards the nephew came in and the agent handed him the key. Subsequently the landlord applied to the local authority for registration of the house as decontrolled, but in the form of application inserted by mistake a wrong date as the date of decontrol. His Honour Judge Leigh dismissed an application by the plaintiff to have the rent of the premises fixed under the Rent Restriction Acts.

**SCOTT, L.J.**, dismissing the plaintiff's appeal, said that there had been actual possession and the house had become decontrolled. Cases as to actual possession must be decided on their particular facts. Here the landlord's agent had explained to the outgoing tenant and the new tenant that he was taking the key on the terms of the house becoming decontrolled. That showed that the symbolic act of handing it over was meant to give the landlord actual possession. As to the registration, there was nothing in the Act to show that the provisions as to the details to be given in the form were anything more than directory. Therefore the mistake as to the date was not a material error and did not invalidate the registration. The new tenancy was decontrolled and the increase of rent valid.

**CLAUSON AND DU PARCQ, L.J.J.**, agreed.

**COUNSEL**: *J. D. Smith; Jolly, K.C., and J. L. E. Rees.*

**SOLICITORS**: *V. M. Lawson, for Albert Aboudi, of Manchester; Johnson, Weatherall, Sturt & Hardy, for Martin & Co., of Manchester.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

### High Court—Chancery Division.

#### *Lock v. Aberscester, Ltd.*

Bennett, J. 5th July, 1939.

**EASEMENTS—RIGHT OF WAY—RIGHT FOR PERSONS ON FOOT AND WITH CARRIAGES AND HORSES—WHETHER RIGHT TO USE WAY FOR MECHANICALLY PROPELLED VEHICLES.**

From 1847 to 1931 the Old Rectory, Holt, Worcestershire, was occupied by a succession of rectors. In 1932, after there had been a union of benefices, it was conveyed to the plaintiff and her aunt. It was established that since 1886 persons having business there had used a way from a public highway through a field now belonging to the defendants without having been stopped. The way had been generally used by horses and carts as a means of conveying goods to and from the rectory. Tradesmen conveying such goods now used mechanically propelled vehicles of greater weight than horse-drawn vehicles. The plaintiff now sought a declaration establishing her right of way.

**BENNETT, J.**, said that the plaintiff had established an easement for persons on foot and with carriages and horses over the way, but the defendants contended that proof of this did not give a right to use it for mechanically propelled vehicles. However, what was claimed was a carriageway and the right claimed was not restricted to a carriage drawn by a particular kind of animal. The law must keep pace with the times. Otherwise many rights of way acquired by prescription would be no longer available since the use of horses was now more rare. Where there was proof of user of carriages drawn by horses for the required period so as to establish a carriageway as an appurtenance, the right enabled the owners of the property to which the right was appurtenant to use it for mechanically propelled vehicles.

**COUNSEL**: *Simes; Grant, K.C., and Roger Turnbull.*

**SOLICITORS**: *Clinton & Co., for Harrisons, of Worcester; Edwin Coe & Calder Woods, for Tree, Hemming & Johnston, of Worcester.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

#### *Stephens v. Snell.*

Bennett, J. 10th July, 1939.

**FISHERY—GRANT OF FISHING RIGHTS IN TIDAL WATERS—EXTENT OF MANORIAL FISHERY.**

The plaintiff claimed an injunction against the defendant, a fisherman by trade and occupation, who had fished in Axmouth Harbour with his boat and nets, to restrain him from so doing. The defendant alleged that he was entitled to fish there in exercise of his common law rights.

**BENNETT, J.**, said that a person claiming to be the owner of a sole and several fishery in tidal waters must rely on a grant by the Crown before Magna Carta. By the common law the public had the right to fish in tidal waters and a sole fishery excluded the public from exercising that right. The Crown's prerogative to grant such a right as the plaintiff claimed was taken away by Magna Carta. His lordship considered certain evidence and came to the conclusion that by the charter on which the plaintiff relied Henry I or Henry II granted the sole and several fishery in the Manor of Axmude or Axmouth to the Abbots of Montebourg. Subsequently the manor came again into the possession of the Crown, but the law was that once there was proof of the grant of a several fishery before Magna Carta there was no merger of it after that date: see *Neill v. Duke of Devonshire*, 8 App. Cas., at p. 180. His lordship enumerated certain grants of the manor and fishery, and having traced the devolution to the plaintiff said that there was no doubt that she was entitled to the sole and several fishery in the tidal waters of the Axe. The only question was whether the defendant had fished within the limits of her fishery. There had been no definition of its limits till an attempt was made to define them in a conveyance of 1891, but the limits of the harbour had been defined in an Act of Parliament of George IV. In "Halsbury's Laws of England," vol. 15, p. 54, it was said that the extent of a manorial fishery was to be determined by the bounds of the manor. That must be right. The limits of the manor were outside the place where the defendant had fished. He had trespassed, and there must be an injunction restraining him from repeating the act. The limits of the fishery, which were wider than those of the harbour, as defined by the statute, were the tidal waters within the boundaries of the manor.

**COUNSEL**: *G. Pollock; J. L. Pratt.*

**SOLICITORS**: *Gedge, Fiske & Co.; Hancock & Willis, for Cecil Forward, of Axminster.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

### High Court—King's Bench Division.

#### *Barrowford Holdings, Ltd. v. Inland Revenue Commissioners.*

Lawrence, J. 26th May, 1939.

**REVENUE—INCOME TAX—UNDISTRIBUTED INCOME OF COMPANY—COMPANY A SUBSIDIARY OF FOREIGN COMPANY—DIRECTION THAT UNDISTRIBUTED INCOME TO BE DEEMED INCOME OF MEMBERS—VALIDITY—FINANCE ACT, 1922 (12 & 13 Geo. 5, c. 17), s. 21 (1) (6)—FINANCE ACT, 1927 (17 & 18 Geo. 5, c. 10), s. 30 (3).**

Appeal by case stated from a decision of the Commissioners of the Special Purposes of the Income Tax.

The appellants were a private company incorporated on the 2nd December, 1936, with the object of holding stocks and shares. The whole of the shares in the company were beneficially owned by a company duly registered in Newfoundland. The company made up their first accounts to the 5th April, 1937, showing a profit of £344, none of which was distributed and the retention of which it was not attempted to justify by reference to requirements of the company's business. The company appealed to the Special Commissioners against a direction which had been made under s. 21 (1) of the Finance Act, 1922, as amended by s. 31 of the Finance

Act, 1927, in respect of the period from the 2nd December, 1936, to the 5th April, 1937. By s. 21 (1) of the Act of 1922: "where it appears . . . that any company . . . has not, within a reasonable time . . . distributed to its members . . . a reasonable part of its actual income . . . the Commissioners may . . . direct that . . . the said income . . . shall . . . be deemed to be the income of the members." By s. 21 (6) (as amended by s. 31 (3) of the Act of 1927), the section "shall apply to any company . . . which is not a subsidiary company . . . For the purpose of this sub-section . . . A company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this section apply... The expression 'company' means a company within the meaning of the Companies (Consolidation) Act, 1908." It was contended for the company on that appeal that they were a subsidiary company within the meaning of the amended s. 21 (6) of the Act of 1922, and that they were, therefore, outside the terms of s. 21. The Crown maintained the reverse, and the Commissioners decided in its favour, accordingly confirming the direction. The company appealed. (*Cur. adv. vult.*)

LAWRENCE, J., said that the appellants argued that the foreign company which controlled them were "a company not being a company to which the provisions of this section apply" within the meaning of those words in the amended s. 21 (6), because they were not a company within the meaning of the Companies (Consolidation) Act, 1908, and that, therefore, the appellant company should be deemed to be a subsidiary company. That contention was unsound. The subsection did not say "the provisions of this section do not apply to companies which are not companies within the meaning of the Companies (Consolidation) Act, 1908" but provided that the expression "company" meant a company within the meaning of that Act. It followed that the words "a company" where they first occurred in the fourth line of the second paragraph of subs. (6), as amended, referred only to English companies. That reading did no violence to the qualifying words which followed, for they referred to such English companies as were not ones to which the section applied. The fact that that construction debarred the subsidiary of a foreign company from exemption from the provisions of the subsection could not alter the clear meaning of the words used. The direction was right, and the appeal must be dismissed.

COUNSEL: *H. Heathcote-Williams; The Attorney-General (Sir Donald Somervell) and R. P. Hills.*

SOLICITORS: *Francis White & Needham, Agents for Frank Roberts, Sons & Baldwin, Nelson; The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

#### Kerr v. Davis.

Lawrence, J. 26th May, 1939.

REVENUE—INCOME TAX—VEGETABLES FOR HUMAN CONSUMPTION PRODUCED ON FARM—COMMISSIONERS' FINDING THAT LAND NOT USED AS GARDEN—QUESTION OF FACT—METHOD OF CULTIVATION A TEST—BASIS OF ASSESSMENT—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Sched. B, r. 8.

Appeal by the Crown by case stated from a decision of Commissioners for the General Purposes of the Income Tax.

The respondent, Davis, was the lessee of a farm comprising in the whole 128 acres of large open fields, 3 acres of which were used for growing horse fodder, the remainder being used for growing vegetables. There were 1½ acres of woodland. The cultivation of the land was carried out by tractors and the usual farm implements. No spade trenching of the land was done by hand. The yearly expenditure on labour averaged £2,500, or about £20 an acre. Wages were paid in

excess of the local minimum scale for farm workers, but the reason was partly competition for labour by local factories. The average annual expenditure on manure, artificial and animal, was £1,600. The respondent's neighbours, who were farmers, all grew vegetables for human consumption as well as cereals, and adopted similar methods of cultivation to the respondent's. The respondent disposed of his produce at his own stall in Covent Garden Market, and occasionally elsewhere in London. An assessment was made on the respondent of £2,600 for the year ending the 5th April, 1937, under r. 8 of the Rules applicable to Sched. B to the Income Tax Act, 1918, in respect of profits derived from the occupation of the 128 acres of land. The respondent, appealing against that assessment, contended that no part of the land was occupied by him as a nursery or garden for the sale of produce; that he had for many years previously been assessed as an ordinary farmer under Sched. B on the rent paid by him for his farm, and had at all material times occupied, and still occupied, the lands for husbandry; that, in devoting his occupation of the farm lands to the production of vegetables, he used methods of cultivation similar to those practised on an ordinary farm occupied wholly or mainly for husbandry; and that the cost of labour was no guide in determining whether the respondent occupied the lands as a farm or as a garden. The respondent relied on *Lord Glanely v. Wightman*, 77 SOL. J. 215; [1933] A.C. 618; and *Back v. Daniels*, 69 SOL. J. 160; 41 T.L.R. 162. It was contended for the Crown, *inter alia*, that practically all the land was used for the growing of produce commonly found in vegetable gardens, i.e., vegetables for human consumption; and that the intensity of cultivation as evidenced by the expenditure on manure (which the respondent ascribed to the dry nature of the soil) showed the cultivation to be that usually applied to a vegetable garden. Reliance was placed on *Monro & Cobley v. Bailey* (1933), 76 SOL. J. 761; 17 T.C. 607, and *Dennis v. Hick* (1935), 19 T.C. 219. The General Commissioners were of opinion that, in view of the method of cultivation adopted by the respondent, the farm was not a garden within the meaning of r. 8 of Sched. B, and they allowed the appeal. The Crown now appealed. (*Cur. adv. vult.*)

LAWRENCE, J., said that the question whether lands were occupied as gardens for the sale of produce within the meaning of r. 8 was a question of fact for the Commissioners: *Monro and Cobley v. Bailey, supra*. There was evidence on which the Commissioners could come to the conclusion to which they came, and they were entitled to rely, in so doing, as they appeared to have relied, on the method of cultivation adopted: see *per Lord Buckmaster in Monro & Cobley v. Bailey*, 17 T.C., at p. 623. The appeal must be dismissed.

COUNSEL: *The Solicitor-General (Sir Terence O'Connor, K.C.) and R. P. Hills; Sir William Jowitt, K.C., and L. C. Graham-Dixon.*

SOLICITORS: *The Solicitor of Inland Revenue; Ellis and Fairbairn.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

#### Watkins v. Inland Revenue Commissioners.

Lawrence, J. 26th May, 1939.

REVENUE—SUR-TAX—MAINTENANCE OF WIFE IN MENTAL INSTITUTION—ANNUAL PAYMENTS FOR BY HUSBAND—WHETHER DEDUCTIBLE IN COMPUTING TOTAL INCOME—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), s. 27.

Appeal by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax.

The appellant was married to his wife in 1904. In July, 1924, she was, after the necessary formalities, conveyed to a mental institution, where she remained, as a person incapable through mental infirmity of managing her own affairs. The institution was one administered under the Lunacy Act, 1890,

and amending Acts. The cost of maintaining the wife at the institution was about £45 a month, to which had to be added doctors' fees and other items. She had an income of her own of about £164 a year from investments. In November, 1924, the appellant applied to the Master in Lunacy to be appointed receiver of his wife's estate. He gave an undertaking, subsequently embodied in the Master's order, to make up the deficiency between the wife's income and the amount needed for her maintenance. The appellant stated in evidence, *inter alia*, that he had always regarded the undertaking as a binding obligation, in the absence of which the court would not have appointed him receiver of his wife's estate. The wife's income amounted to some £400 a year less than the cost of her maintenance, the whole of which cost was composed of the charge made by the proprietor of the institution, with the additional expenses. It was stated in evidence by an official of the Management and Administration Department, Royal Courts of Justice, *inter alia*, that, in the opinion of the department, the appellant's undertaking was merely recited in the order for convenience and was not enforceable in law, the court having power at any time to remove a receiver, removal from the receivership not following automatically on a failure to carry out the undertaking. On an appeal against sur-tax assessments for certain years, it was contended for the appellant that he was, by reason of his undertaking, bound to make up his wife's income to the total sum needed for her maintenance; that the sums paid by him under the undertaking were annual payments which constituted charges against his total income; that they were proper deductions in arriving at his total income for purposes of sur-tax; and that there should be adjustments of the disputed assessments by deducting the payments made in the years in question. The Crown contended, *inter alia*, that the appellant's payments under the undertaking were not made in pursuance of any legal obligation; and that they were not charges against his income for purposes of sur-tax, or proper deductions to be made in calculating his total income for sur-tax purposes. The Commissioners held that the payments were voluntary applications of the appellant's income, and should not be deducted. Against that decision the present appeal was brought. It was admitted by the Crown during argument for the purposes of the present case that the payments made by the appellant for the maintenance of his wife were not voluntary payments. (*Cur. adv. vult.*)

LAWRENCE, J., said that the Crown now argued that, although maintenance paid to a wife under an order of the Divorce Court (*Smith v. Smith*, 67 SOL. J. 749; [1923] P. 191), or of a magistrate (*Clack v. Clack*, 79 SOL. J. 306; [1935] 2 K.B. 109), or of the court for separation, or under an agreement for separation, constituted an annual payment under s. 27 of the Income Tax Act, 1918, yet maintenance payable under an order of the Master in Lunacy did not. It was said that the obligation to maintain a wife at common law differed entirely from that under the divorce laws. The arguments on that point had not convinced him that there was any material distinction between the two kinds of payment; but the matter did not rest there. Annual payments, as was well settled, did not come under s. 27 unless they themselves constituted income in the hands of the payees: *Howe (Earl) v. Inland Revenue Commissioners*, 63 SOL. J. 516; [1919] 2 K.B. 336. Here the husband could not deduct tax from the payments because of the deficiency in his wife's income which he was obliged to make up; nor could the wife pay tax out of the sum provided by her husband, because her maintenance would then be unprovided for. The wife, though she had the benefit of the expenditure, was not entitled to the money as such. In his (his lordship's) opinion, the annual sum payable by the husband was an expenditure of his income, and did not constitute the income of his wife. The appeal must be dismissed.

COUNSEL: *J. S. Scrimgeour and J. A. Wolfe; The Solicitor-General* (Sir Terence O'Connor, K.C.) and *R. P. Hills*.

SOLICITORS: *Bartlett & Gluckstein; The Solicitor of Inland Revenue*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

#### Inland Revenue Commissioners v. Lord Delamere.

Lawrence, J. 9th June, 1939.

REVENUE—SUR-TAX—IRREVOCABLE SETTLEMENT—PART OF INCOME FROM SETTLED PROPERTY PAID TO SETTLOR'S INFANT CHILD BY TRUSTEES IN EXERCISE OF ABSOLUTE DISCRETION—WHETHER PAYMENT TO BE INCLUDED IN ASSESSING SETTLOR TO SUR-TAX—FINANCE ACT, 1936 (26 Geo. 5 and 1 Edw. 8, c. 34), s. 21.

Appeal by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax.

An ante-nuptial settlement into which the respondent subject entered on the 20th June, 1932, conveyed certain land to trustees and provided *inter alia* that during the respondent settlor's life the land should be held on trust to apply the income from it for the benefit of the settlor, his wife and his children, whether minors or adults, payments to be made at such times and in such manner as the trustees in their absolute discretion should think fit. The trustees were not liable to account for their exercise of the discretion. The deed contained no power of revocation. During the year 1936–37, partly before and partly after the 16th July, 1936, the trustees, in exercise of their discretion, paid certain sums for the benefit of the respondent's three infant children, practically the whole of the balance of the trust income being paid to the respondent. In an assessment to sur-tax made on the respondent for that year the sums so paid to the children were included. The respondent accordingly appealed to the Commissioners, who decided in his favour. By s. 21 of the Finance Act, 1936, "(1) Where by . . . any settlement to which this section applies, and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the commencement of that year the child was an infant and unmarried, be treated . . . as the income of the settlor for that year . . . (8) For the purposes of this section a settlement shall not be deemed to be irrevocable, if the terms thereof provide (a) For the payment . . . during the life of the settlor . . . of any income . . . in any circumstances whatsoever during the life of any child of the settlor to or for the benefit of whom any income . . . is . . . payable . . . by virtue . . . of the settlement . . . (10) This section applies to every settlement . . . whether . . . made . . . before or after the passing of this Act, except a settlement of this Act, except a settlement made . . . before the 22nd April, 1936, which immediately before that date was irrevocable."

LAWRENCE, J., said that the settlement was not revocable in the ordinary meaning of that word. The Crown contended that the Commissioners were wrong in construing s. 21 (10) irrespective of s. 21 (8), and that if subs. (10) were construed with subs. (8) the settlement in question was not an irrevocable settlement within the meaning of subs. (10) and that, therefore, s. 21 applied. In his opinion, subs. (10) must, *prima facie*, be read with subs. (8), because subs. (8) said: "For the purposes of this section a settlement shall not be deemed to be irrevocable," and subs. (10) was a part of the section. It was contended for the respondent that the words in subs. (8), "a settlement shall not be deemed to be revocable," being in the future tense could not be treated as applying to the word "irrevocable" in subs. (10), because that subsection was clearly dealing with the past in that it excepted settlements made before the 22nd April, 1936, which immediately before that date were irrevocable. The Solicitor-General argued that, as there were only two other parts of s. 21 in which irrevocability of settlements was mentioned—

namely, subs. (3) and (10)—and as both those subsections referred to the past, the respondent's argument made the provisions of subs. (8) altogether nugatory. The argument of the Crown was correct. There was nothing in the use of the words "shall not be deemed to be irrevocable" instead of the words "shall not be deemed to have been irrevocable," which indicated an intention not to refer in subs. (8) to settlements excepted by subs. (10). It was further argued that subs. (8) referred to "payment to the settlor," and that the terms of the settlement did not provide for payment to the settlor, because payment was entirely in the discretion of the trustees. But the subsection went on to say, "in any circumstances whatsoever," and the Crown argued that the discretion of the trustees was a "circumstance," and that it was impossible to say that, when the trustees had exercised their discretion and paid money to the settlor, they had not done so in accordance with the terms of the settlement. The Crown's argument was right on that point also.

The appeal must be allowed.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.), *J. H. Stamp* and *R. P. Hills*; *Cyril King*, K.C., and *F. Grant*.

SOLICITORS: *The Solicitor of Inland Revenue*; *Williams and James*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## Obituary.

### MR. R. BUTTERWORTH.

Mr. Raymond Butterworth, solicitor, a partner in the firm of Messrs. Downing & Handcock, of Cardiff, died recently at the age of sixty-four. Mr. Butterworth was articled to the late Mr. Handcock, and was admitted a solicitor in 1900. He was managing clerk to the firm for many years, and on the death of Mr. G. C. Downing in 1927 he became a partner.

### MR. W. J. RABNETT.

Mr. Walter James Rabnett, solicitor, senior partner in the firm of Messrs. Rabnett, Conway & Co., of Birmingham, died in a nursing home at Llandudno, on Friday, 11th August, at the age of seventy-five. Mr. Rabnett was admitted a solicitor in 1892. In 1922 he was joined in partnership by Mr. E. Conway, who had been a member of his staff for many years.

### MR. F. STONEHOUSE.

Mr. Frank Stonehouse, retired solicitor, of Wakefield, died recently at his home at the age of seventy-eight. Mr. Stonehouse served his articles with the late Alderman George Mander, of Wakefield, and was admitted a solicitor in 1886.

### MR. A. WILSON.

Mr. Alexander Wilson, retired solicitor, a former partner in the firm of Messrs. Wilson, Cowie & Dillon, of Liverpool, died at Worthing, on Friday, 11th August, at the age of eighty-three. Mr. Wilson was admitted a solicitor in 1882.

## The Law Society.

### PROVINCIAL MEETING, 1939.

As already announced, the Provincial Meeting of The Law Society will be held this year at Worthing, on Tuesday and Wednesday, the 26th and 27th September. Particulars of the arrangements have been circulated. Those members of the Society who contemplate attending the meeting should intimate their intention as soon as possible to the Honorary Secretary of the Worthing Law Society, Westminster Bank Chambers, South Street, Worthing, in order that programmes may be sent to them.

### PROVINCIAL MEETING, 1940.

The Council of The Law Society have accepted with gratitude an invitation from the Bath Law Society to hold the Provincial Meeting at Bath in 1940. The meeting will be held during the week commencing the 23rd September, 1940.

### HONOURS EXAMINATION.

JUNE, 1939.

At the examination for Honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the Examination Committee recommended the following as being entitled to Honorary Distinction:—

#### FIRST CLASS.

(In order of merit.)

1. John Philip Lawton, B.A., LL.B. Cantab. (served articles with Mr. Thomas Francis Heyworth, B.A., of the firms of Messrs. Boote, Edgar & Co., and Messrs. Diggles and Ogden, both of Manchester; and Messrs. Pritchard, Englefield & Co., of London).
2. John Bewley Gilbart-Smith, B.A. Cantab. (served articles with Mr. Harold St. George Symes, of the firm of Messrs. Henry Mossop & Symes, of London).  
John Keyworth Boynton, LL.B. London (served articles with Mr. Bruce Penny and Mr. Oliver Leslie Roberts, both of London).
3. Piers William Edward Currie, B.A. Oxon (served articles with Mr. Cecil William Bateson, of the firms of Messrs. Thomas Cooper & Co., and Messrs. Stibbard, Gibson and Co., both of London).

#### SECOND CLASS.

(In alphabetical order.)

Stephen Wallace Graham Bingay, John Geoffrey Victor Bolton, B.A., B.C.L. Oxon, Cecil Frank Cooper, B.A. Cantab., Jack Eva, B.A., LL.B. Cantab., John Hubert Field, B.A. Oxon, Evan Glyn George, Wilkinson Keenleyside Gibson, B.A. Cantab., LL.B. Durham, Walter James Gilmore, Henry James Gundill, B.A., LL.B. Cantab., Donald Sidney Harding, LL.B. London, John Crompton Holt, B.A., B.C.L. Oxon, Derek Joseph Hyamson, B.A., LL.B. Cantab., John Stuart Johnstone, B.A. Cantab., Benjamin George Jones, LL.B. Wales, Kurt Max Krakenberger, Cyril Bernard Landau, LL.B. London, Alan Henry Lunt, B.A., B.C.L. Oxon, Peter Marriage, B.A., LL.B. Cantab., David Dudley Morgan, M.A., LL.B., Claude Drew Pike, B.A., LL.B. Cantab., Robert Alexander Rogers, LL.B. London, Allan Dorset Smith, LL.B. London, Alexander John Taylor, B.A. Cantab.

#### THIRD CLASS.

(In alphabetical order.)

George Wilson Bain, B.A. London, Henry Langton Birch, B.A. Oxon, Kenneth William Bowder, Denis Macduff Burke, B.A. Cantab., Brandon Cadbury, B.A. Cantab., Francis Geoffrey Collins, M.A. Cantab., Richard Kenneth Cooke, Jim Cooksley, Martin Anthony Engleheart Cresswell, Michael Geoffrey de Winton, Richard Talbot Flower, Basil Gill, Denis Byrne Harrison, LL.B. Liverpool, Henry Charles East Johnson, John Raymond Little, B.A. Cantab., Peter Lowy, Charles Herbert Matthews, Harold Tetley Milnes, B.A. Oxon, David Ivor Lloyd Roberts, Dennis George Harvey Stapleton, Harold Travers, Richard Lionel George Wood, Edward Ivor Yale, B.A., LL.B. Cantab., John Aitchison Young.

The Council of The Law Society have accordingly given a Class Certificate and awarded the following Prizes:—

To Mr. Lawton—The Clement's Inn Prize—Value about £34.

To Mr. Gilbart-Smith—The Daniel Reardon Prize—Value about £17.

To Mr. Boynton and Mr. Currie—each the Clifford's Inn Prize—Value £5 5s.

The Council have given Class Certificates to the candidates in the Second and Third Classes.

Two hundred and forty-three candidates gave notice for examination.

## Legal Notes and News.

### Honours and Appointments.

The King, on the recommendation of the Lord Chancellor, has approved the following appointments:—

Mr. ROBERT CHARLES PLUMPTRE RAMSDEN (Chairman, Nottinghamshire Quarter Sessions); Mr. JOHN NORMAN DAYNES, K.C., and Captain ARTHUR LOMBE TAYLOR (Deputy-Chairmen, Norfolk Quarter Sessions); Mr. ARTHUR HYDE HULTON (Deputy-Chairman, Salop Quarter Sessions).

The above appointments are in accordance with the provisions of the Administration of Justice (Miscellaneous Provisions) Act, 1938, and are to take effect from 4th August.

The following appointments are announced in the Colonial Legal Service :

Mr. I. J. T. TURBETT, Attorney-General, Sierra Leone, appointed Puisne Judge, Gold Coast.

Mr. C. H. WHITTON, Officer, Class IV, Malayan Civil Service, appointed Magistrate, Straits Settlements and Federated Malay States.

Mr. JOHN BOYLE, LL.B., Senior Assistant Solicitor to the Hull Corporation since 1936, has been appointed Deputy Town Clerk and Deputy Clerk of the Peace of Rotherham in succession to Mr. E. L. H. Turner, recently appointed Town Clerk of Scarborough. Mr. Boyle was admitted a solicitor in 1932.

Mr. S. M. T. BURPITT, solicitor, Deputy Town Clerk of Newport, Mon., has been appointed Town Clerk of the borough in succession to the late Mr. O. T. Morgan. Mr. Burpitt was admitted a solicitor in 1904.

### Notes.

It is announced that Mr. F. Le Neve Foster, solicitor, has been appointed to the Board of Crompton Parkinson, Ltd. Mr. Le Neve Foster is a member of the firm of Messrs. Warren, Murton, Foster & Swan, solicitors, of Bloomsbury Square, W.C., and has been associated with the company for many years. He is also a director of The Stanton Ironworks Co., Ltd., and other well-known public companies.

We understand that for a limited period the Executive Council of the Faculty of Architects and Surveyors (represented by Statute on the Architects' Registration Council of the United Kingdom) are prepared to consider applications for membership on practice qualifications from persons engaged in the profession of architecture and/or surveying. Members are designated Fellows (F.F.A.S.), Associates (A.F.A.S.), Licentiates (L.F.A.S.), and a list of members can be obtained from the Secretary, Victoria House, Southampton Row, London, W.C.1.

The Half-Yearly Statistical Report relating to new Companies registered in England during the half-year ended 30th June, 1939, has recently been issued by Messrs. Jordan and Sons, Limited, Company Registration Agents, Chancery Lane, London. The report shows that the total number of companies incorporated in England is 6,617 and the total capital is £30,101,902, showing a decrease of only £2,240,320. Contrary to expectation, "public" companies show an increase of £3,368,934, while the number of public companies (104) is only four below that for January-June, 1938. Both the number and total capital of "private" companies are somewhat down, the number being 6,513 against 6,558 (decrease forty-five), and the capital £24,630,652 against £30,239,906 (decrease £5,609,254).

### Wills and Bequests.

Mr. Allman Vizer Bridge, solicitor, of Clifton, Bristol, left £13,588, with net personality £6,598.

Mr. Charles Edward Godwin, solicitor, of Winchester, left £14,481, with net personality £11,363.

Mr. Alan Leslie Henderson, solicitor, of Limpsfield, Surrey, left £15,850, with net personality £12,850.

Mr. Edwin Williamson Hewitt, solicitor, of Bridlington and Hull, left £48,567, with net personality £43,720.

### NOTICE TO CONTRIBUTORS.

The Editor will be pleased to consider for publication contributions and correspondence from any professional source upon matters of legal interest.

All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

The Editor is unable to accept any responsibility for the safe custody of contributions submitted to him, and copies should therefore be retained. The Editor will, however, endeavour in special circumstances to return unsuitable contributions within a reasonable period, if a request to this effect and a stamped addressed envelope are enclosed with the manuscript.

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## Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 24th August 1939.

	Div. Months.	Middle Price 16 Aug. 1939.	Flat Interest Yield.	Approximate Yield with redemption
<b>ENGLISH GOVERNMENT SECURITIES</b>				
Consols 4% 1957 or after ..	FA	101½	3 18 10	£ s. d.
Consols 2½% ..	JAJO	66	3 15 2	3 17 6
War Loan 3½% 1952 or after ..	JD	91½	3 16 2	—
Funding 4% Loan 1960-90 ..	MN	105½	3 15 10	3 12 6
Funding 3% Loan 1959-69 ..	AO	91½	3 5 5	3 8 10
Funding 2½% Loan 1952-57 ..	JD	91	3 0 5	3 8 6
Funding 2½% Loan 1956-61 ..	AO	84½	2 19 6	3 10 6
Victory 4% Loan Av. life 21 years ..	MS	105½	3 16 0	3 12 10
Conversion 5% Loan 1944-64 ..	MN	199½	4 11 6	2 10 10
Conversion 3½% Loan 1961 or after ..	AO	92½	3 15 5	—
Conversion 3% Loan 1948-53 ..	MS	96½	3 2 2	3 6 4
Conversion 2½% Loan 1944-49 ..	AO	96½	2 11 11	2 18 9
National Defence Loan 3% 1954-58 ..	JJ	94	3 3 10	3 8 7
Local Loans 3% Stock 1912 or after ..	JAJO	78½	3 16 8	—
Bank Stock ..	AO	312	3 16 11	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after ..	JJ	73	3 15 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after ..	JJ	79½	3 15 6	—
India 4½% 1950-55 ..	MN	108	4 3 4	3 12 2
India 3½% 1931 or after ..	JAJO	84	4 3 4	—
India 3% 1948 or after ..	JAJO	71	4 4 6	—
Sudan 4½% 1939-73 Av. life 27 years ..	FA	106	4 4 11	4 2 6
Sudan 4% 1974 Red. in part after 1950 MN	103½	3 17 4	3 12 3	—
Tanganyika 4% Guaranteed 1951-71 ..	FA	102½	3 18 1	3 14 6
L.P.T.B. 4½% "T.F.A." Stock 1942-72 ..	JJ	103	4 7 5	3 4 4
Lon. Elec. T. F. Corp. 2½% 1950-55 ..	FA	85½	2 18 6	3 14 4
<b>COLONIAL SECURITIES</b>				
Australia (Commonw'th) 4% 1955-70 ..	JJ	95½	4 3 9	4 5 4
Australia (Commonw'th) 3% 1955-58 ..	AO	78½	3 16 5	4 14 9
*Canada 4% 1953-58 ..	MS	106½d	3 15 6	3 9 0
Natal 3% 1929-49 ..	JJ	94	3 3 10	3 16 0
New South Wales 3½% 1930-50 ..	JJ	89	3 18 8	4 16 3
New Zealand 3% 1945 ..	AO	89½	3 7 0	5 5 4
Nigeria 4% 1963 ..	AO	105½	3 15 10	3 13 0
Queensland 3½% 1950-70 ..	JJ	86	4 1 5	4 6 10
South Africa 3½% 1953-73 ..	JD	95	3 13 8	3 15 3
Victoria 3½% 1929-49 ..	AO	90	3 17 9	4 15 8
<b>CORPORATION STOCKS</b>				
Birmingham 3% 1947 or after ..	JJ	78	3 16 11	—
Croydon 3% 1940-60 ..	AO	89	3 7 5	3 15 4
Essex County 3½% 1952-72 ..	JD	96½	3 12 6	3 13 9
Leeds 3% 1927 or after ..	JJ	76	3 18 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase ..	JAJO	90	3 17 9	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	62½d	4 0 0	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	75½d	3 19 6	—
Manchester 3% 1941 or after ..	FA	76½	3 18 5	—
Metropolitan Consd. 2½% 1920-49 ..	MJSD	94d	2 13 2	3 4 2
Metropolitan Water Board 3% "A" 1963-2003 ..	AO	80½	3 14 6	3 16 10
Do. do. 3% "B" 1934-2003 ..	MS	80½d	3 15 0	3 16 10
Do. do. 3% "E" 1953-73 ..	JJ	90½	3 6 4	3 9 7
*Middlesex County Council 4% 1952-72 MN	104	3 16 11	3 12 3	—
* Do. do. 4½% 1950-70 ..	MN	107	4 4 1	3 14 3
Nottingham 3% Irredeemable ..	MN	77	3 17 11	—
Sheffield Corp. 3½% 1968 ..	JJ	97	3 12 2	3 13 4
<b>ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS</b>				
Gt. Western Rly. 4% Debenture ..	JJ	97½	4 2 1	—
Gt. Western Rly. 4½% Debenture ..	JJ	105	4 5 9	—
Gt. Western Rly. 5% Debenture ..	JJ	114½	4 7 4	—
Gt. Western Rly. 5% Rent Charge ..	FA	110½	4 10 6	—
Gt. Western Rly. 5% Cons. Guaranteed ..	MA	104½d	4 15 8	—
Gt. Western Rly. 5% Preference ..	MA	86d	5 16 3	—
Southern Rly. 4% Debenture ..	JJ	97½	4 2 1	—
Southern Rly. 4% Red. Deb. 1962-67 ..	JJ	103	3 17 8	3 16 0
Southern Rly. 5% Guaranteed ..	MA	107½d	4 13 0	—
Southern Rly. 5% Preference ..	MA	88d	5 13 8	—

\* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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